

C-507-501  
Administrative Review  
POR: CY2001  
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DAS Group II/Office VI: DB

**MEMORANDUM TO:** Joseph A. Spetrini  
Acting Assistant Secretary  
for Grant Aldonas, Under Secretary

**FROM:** Holly A. Kuga  
Acting Deputy Assistant Secretary  
for AD/CVD Enforcement II

**SUBJECT:** Issues and Decision Memorandum: Final Results of Countervailing  
Duty Administrative Review: Certain In-Shell (Raw) Pistachios from  
the Islamic Republic of Iran

**SUMMARY:**

We have analyzed the comments of interested parties in the final results of the above-mentioned countervailing duty (CVD) administrative review covering the period of review (POR) January 1, 2001, through December 31, 2001. The "Methodology and Background Information" and "Analysis of Programs" sections below describe the decisions made in this review. Also below is the "Analysis of Comments" section, which contains the Department of Commerce's (Department) response to the issues raised in the briefs. We recommend that you approve the positions we have developed in this memorandum. Below is a complete list of the issues in this review for which we received comments from parties:

Comment 1: Use of Adverse Facts Available  
Comment 2: Export Certificate Voucher Program  
Comment 3: Price Supports Program

I. Methodology and Background Information

Use of Facts Available

During the course of this proceeding, we have repeatedly sought information pertaining to all companies that are cross-owned and/or affiliated with Rafsanjan Pistachios Producers Cooperative (RPPC), the producer of subject merchandise, and RPPC's shareholders. See pages III-3 through III-4 of the Department's June 11, 2002, questionnaire, page 1 of the Department's September 17, 2002, supplemental questionnaire, and page 1 of the Department's March 5, 2003, second supplemental questionnaire. In addition, we have repeatedly requested information concerning the total sales and sales of subject merchandise made by RPPC during the POR. See pages III-3 through III-4 of the Department's June 11, 2002, questionnaire, page 1 of the Department's September 17, 2002 supplemental questionnaire, and page 1 of the Department's March 5, 2003, second supplemental questionnaire. Moreover, we have repeatedly asked for specific information concerning RPPC's and its members' usage of the following programs: Provision of Fertilizer and Machinery, Provision of Water and Irrigation Equipment, Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Exported Goods, Program to Improve the Quality of Exports of Dried Fruit, Tax Exemptions, Technical Assistance from the GOI, and Provision of Credit. See pages III-9 through III-12 of the Department's June 11, 2002, questionnaire, pages 3 through 6 of the Department's September 17, 2002, supplemental questionnaire, and pages 3 through 4 of the Department's March 5, 2003, second supplemental questionnaire.

In response to these repeated inquiries relating to affiliation, sales data, and the seven aforementioned programs, RPPC repeatedly failed to answer specific questions, provided incomplete answers, and did not provide useable information regarding these seven programs.

In addition, we have sought, without success, information from the GOI regarding details about RPPC's and its growers' usage of the programs under review. See the Department's June 11, 2002, initial questionnaire. Moreover, we specifically asked the GOI to provide copies of relevant legislation proving that certain programs subject to this administrative review have been terminated. See the Department's February 20, 2003, supplemental questionnaire. The GOI failed to provide the requested legislation and only answered one of the Department's supplemental questions (see the GOI's March 19, 2003, submission).

Section 776(a) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. As described above, RPPC and the GOI have failed to provide information regarding these programs in the manner explicitly and repeatedly requested by the Department; therefore, we have resorted to the facts otherwise available, as further explained in the "Analysis of Programs" section below.

Furthermore, section 776(b) of the Act provides that in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability. The Department finds that by not providing necessary information specifically requested by the Department, despite numerous opportunities, the GOI and RPPC have failed to cooperate to the best of their ability. Therefore, in selecting from among the facts available, the Department determines that an adverse inference is warranted.

When employing an adverse inference in an administrative review, the statute indicates that the Department may rely upon information derived from (1) the petition, a final determination in a countervailing duty or an antidumping investigation, any previous administrative review, new shipper

review, expedited antidumping review, section 753 review, or section 762 review; or (2) any other information placed on the record. See section 776(b) of the Act; see also 19 CFR 351.308(c). Thus, in applying adverse facts available, we have used information on the record of this administrative review as well as information on the programs and exchange rates from the final determinations of Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: In-Shell Pistachios from Iran, 51 FR 8344 (March 11, 1986) (In-Shell Pistachios) and Certain In-shell Pistachios and Certain Roasted In-shell Pistachios from the Islamic Republic of Iran: Final Results of New Shipper Countervailing Duty Reviews, 68 FR 4997 (January 31, 2003) (Pistachios New Shipper Reviews).

Specifically, for the Export Certificate Voucher Program, we used publicly available data from the Pistachios New Shipper Reviews in order to calculate a benefit. With respect to the other seven programs determined to confer subsidies, we relied on the rates calculated for each of those programs in the original investigation of In-shell Pistachios. The Department's selection of the information used as adverse facts available is discussed in more detail in the program-specific sections below.

If the Department relies on secondary information (e.g., data from a petition) as facts available, section 776(c) of the Act provides that the Department shall, "to the extent practicable," corroborate such information using independent sources reasonably at its disposal.<sup>1</sup> The SAA further provides that to corroborate secondary information means that the Department will satisfy itself that the secondary information to be used has probative value. See Statement of Administrative Action, accompanying H.R. 5110 (H. Doc. No. 103-316) (1994) (SAA) at 868. See also 19 CFR 351.308.

Thus, in those instances in which it determines to use secondary information, the Department, in order to satisfy itself that such information has probative value, will examine, to the extent practicable, the reliability and relevance of the information used. See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, 66 FR 37007 (July 16, 2001). However, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. The only source for such information normally is administrative determinations. In the instant case, no evidence has been presented or obtained which contradicts the reliability of the evidence relied upon in previous segments of this proceeding.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render benefit data not relevant. See Cotton Shop Towels from Pakistan: Final Results of Countervailing Duty Administrative Review, 66 FR 42514 (August 13, 2001) at "Use of Facts Available Section" of the Final Issues and Decision Memorandum (where the Department used the subsidy rate found for a program in the last administrative review conducted for the order). Where circumstances indicate that the information is not appropriate as adverse facts available, the Department will not use it. See Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996) (where the Department disregarded the highest dumping margin as best information available because

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<sup>1</sup> The Statement of Administrative Action accompanying the URAA clarifies that information from the petition is "secondary information." See Statement of Administrative Action, accompanying H.R. 5110 (H. Doc. No. 103-316) (1994) (SAA) at 870.

the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In the instant case, no evidence has been presented or obtained which contradicts the relevance of the benefit data relied upon in previous segments of this proceeding. Thus, in the instant case, the Department finds that the information used has been corroborated to the extent practicable. The Department's application of adverse facts available is discussed in further detail in the "Analysis of Comments" section below.

## II. Analysis of Programs

### A. Programs Determined to Confer Subsidies

#### 1. Export Certificate Voucher Program

According to RPPC, it utilized the export certificate voucher program during the POR, selling the vouchers on the open market at slightly higher margins (*i.e.*, the margin between the export rate and "free market" rate) (*see* page 11 and Exhibit 7 of RPPC's August 19, 2002, questionnaire response). Moreover, RPPC used the early deposit reward program during the POR (*see* page 4 of RPPC's October 15, 2002, questionnaire response). In our Preliminary Results<sup>2</sup>, to calculate the benefit from the export certificate voucher program, we subtracted the exchange rate listed on each export certificate RPPC sold during the POR from the free market exchange rate that was in effect as of the date of the export certificate. We then multiplied this difference, in rials per dollar, by the dollar value listed on each export certificate. Next, we summed each of the products to arrive at the total benefit in rials. We then divided the total benefit by RPPC's export sales during the POR. As facts available, we used RPPC's total sales of export certificates in rials for RPPC's export sales in our calculations, as RPPC did not provide us with its export sales, as explained above.

Since the Preliminary Determination, we have received comments from petitioners on this program. Specifically, petitioners maintain that the Department effectively applied neutral facts available in the Preliminary Results, capturing only the benefit of those sales that RPPC reported. Based on comments raised by petitioners, we have changed our calculation methodology for the final results. For the purposes of these final results, we have recalculated the subsidy rates for the export certificate voucher programs and the early deposit reward. Specifically, we recalculated the benefit under the export certificate voucher program by first calculating a monthly benefit in rials for the months January through June, *i.e.*, the months for which we had complete data, by subtracting the exchange rate listed on each export certificate RPPC sold during that month from the free market exchange rate that was in effect as of the date of the export certificate. We then multiplied this difference, in rials per dollar, by the dollar value listed on each export certificate. Next, we summed each of the products to arrive at the total benefit in rials for each month, January through June.

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<sup>2</sup> Certain In-shell Pistachios from the Islamic Republic of Iran: Preliminary Results of Countervailing Duty Administrative Review, 68 FR 16473 (April 4, 2003) (Preliminary Results).

Next, we applied the highest monthly benefit calculated as described above to the months July through December, i.e., the months for which we had missing or incomplete data. We then summed the monthly benefits and divided the total benefit for the POR by RPPC's total sales for the POR. We used RPPC's total sales as adverse facts available because RPPC did not report their export sales and because the value of RPPC's total sales was less than the value of the export certificates. On this basis, we determine, for liquidation purposes, a net countervailable subsidy of 3.42 percent ad valorem for RPPC.

For the purposes of these final results, we calculated a benefit for RPPC's early deposit rewards by taking 6 percent of RPPC's total sales of export certificates in rials, as RPPC did not provide us with its export sales, to determine the maximum benefit RPPC could have earned under the early deposit reward program. Next, we divided that benefit by RPPC's total sales, as adverse facts available. On this basis, we determine, for liquidation purposes, a net countervailable subsidy of 7.58 percent ad valorem for RPPC. For further discussion, see Comment 2, below and the Calculations for Final Results Memorandum (Final Calculation Memo) from Darla Brown to the file, dated concurrently with this memorandum and is on file in room B-099 of the Main Commerce Building.

However, we found in the Pistachios New Shipper Reviews that the export certificate voucher program in its entirety was terminated as of March 21, 2002 (see Comment 13 of the Issues and Decision Memorandum). Therefore, for cash deposit purposes, the rate is 0.00 percent ad valorem for RPPC.

## 2. Provision of Fertilizer and Machinery

Petitioners<sup>3</sup> have alleged that under this program the GOI provides fertilizer and machinery to the pistachio industry at preferential prices. Although RPPC itself stated that it did not receive any inputs from the GOI during the POR, RPPC did not provide any information regarding the usage of this program by the 70,000 members of RPPC, although the Department requested such information in its questionnaires. No new information has been provided by respondents to warrant a change since the Preliminary Results. Therefore, as adverse facts available, we determine a net countervailable subsidy of 7.11 percent ad valorem, the rate for this program from In-shell Pistachios, for RPPC.

## 3. Provision of Water and Irrigation Equipment

Petitioners have alleged that the GOI undertakes the construction of soil dams, flood barriers, canals, and other irrigation projects on behalf of pistachio farmers. Although RPPC itself stated that it did not receive any funding from the GOI during the POR with respect to this program, RPPC did not provide any information regarding the usage of this program by the 70,000 members of RPPC. Again, this is in light of the fact that the Department specifically and repeatedly requested this information. No new information has been provided by respondents to warrant a change since the Preliminary Results.

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<sup>3</sup> Petitioners include the California Pistachios Commission and its members and a domestic interested party, Cal Pure Pistachios, Inc.

Therefore, as adverse facts available, we determine a net countervailable subsidy of 7.11 percent ad valorem, the rate for this program from In-shell Pistachios, for RPPC.

4. Program to Improve Quality of Exports of Dried Fruit

Petitioners have alleged that pursuant to the Budget Act of 2001 - 2002, the GOI provides financial assistance to exporters of dried fruit and pistachios to assist them in the production of export quality goods. RPPC did not respond to questions regarding its or its members' usage of this program, although this information was specifically and repeatedly requested by the Department. No new information has been provided by respondents to warrant a change since the Preliminary Results. Therefore, as adverse facts available, we determine a net countervailable subsidy of 7.11 percent ad valorem, the rate for this program from In-shell Pistachios, for RPPC.

5. Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Exported Goods

Petitioners have alleged that pursuant to the Third Five Year Development Plan (TFYDP) enacted by the GOI, duties and levies paid in connection with the importation of intermediate materials used in the production of the exported commodities and goods are refunded to exporters. RPPC did not answer any of our questions with respect to this program. No new information has been provided by respondents to warrant a change since the Preliminary Results. Therefore, as adverse facts available, we determine a net countervailable subsidy of 7.11 percent ad valorem, the rate for this program from In-shell Pistachios, for RPPC.

6. Tax Exemptions

Petitioners have alleged that the GOI provides tax exemptions to agricultural producers who are exporters. During the verification of the new shipper reviews, the Department learned that section 141 of the Direct Taxation Act exempts exporters of agricultural goods from income taxes (see December 4, 2002 memorandum to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI from Alicia Kinsey, Case Analyst, Verification of the Questionnaire Responses Submitted by the GOI (GOI Verification Report) at page 6, which was placed on the record of this administrative review on February 19, 2003)). RPPC stated that it was not subject to income taxation during the POR. However, RPPC has failed to provide relevant tax information for any of the 70,000 growers that are members of its cooperative, although this information was specifically and repeatedly requested by the Department. No new information has been provided by respondents to warrant a change since the Preliminary Results. Therefore, as adverse facts available, we determine a net countervailable subsidy of 7.11 percent ad valorem, the rate for this program from In-shell Pistachios, for RPPC.

7. Technical Assistance from the GOI

Petitioners have alleged that pistachio growers receive technical support as part of the GOI's program to facilitate agricultural development. Although RPPC itself stated that it did not receive any technical assistance from the GOI during the POR with respect to this program, RPPC did not provide any information regarding the usage of this program by the 70,000 members of RPPC, although this information was specifically and repeatedly requested by the Department. No new information has been provided by respondents to warrant a change since the Preliminary Results. Therefore, as adverse facts available, we determine a net countervailable subsidy of 7.11 percent ad valorem, the rate for this program from In-shell Pistachios, for RPPC.

8. Provision of Credit

Petitioners have alleged that the GOI provides loans at below market interest rates to members of the agricultural sector. No new information has been provided by respondents to warrant a change since the Preliminary Results. Therefore, as adverse facts available, we determine a net countervailable subsidy of 7.11 percent ad valorem, the rate for this program from In-shell Pistachios, for RPPC.

B. Program Determined to Be Not Countervailable

Price Supports and/or Guaranteed Purchase of All Production

Based on information obtained in the course of the recently-completed new shipper reviews of in-shell pistachios and in-shell roasted pistachios from Iran, we determined that this program is not countervailable (see Pistachios New Shipper Reviews and the accompanying Issues and Decision Memorandum at Comment 5). No information was submitted in the instant review to warrant the Department to reconsider its determination. Therefore, we continue to find this program not countervailable.

III. Total Ad Valorem Rate

The total net subsidy rate for RPPC in this review is 60.77 percent ad valorem. The cash deposit rate for RPPC in this review is 49.77 percent ad valorem.

IV. Analysis of Comments

**Comment 1: Use of Adverse Facts Available**

Petitioners argue that the Department should continue to base RPPC's net countervailable subsidy rate on adverse facts available in its final results. Petitioners state that with respect to the provision of fertilizer and machinery, provision of credit, tax exemptions, provision of water and irrigation, technical assistance from the GOI, duty refunds on imported raw or intermediate materials

used in the production of exported goods program, and the program to improve the quality of exports of dried fruits, the Department should continue to base RPPC's net countervailable subsidy rate on adverse facts available. Petitioners state that the record contains numerous examples of the respondents withholding information requested by the Department and failing to provide requested information by the deadline or in the form and manner requested. For these seven programs, petitioners assert that both the GOI and RPPC repeatedly failed to answer specific questions, provided incomplete answers and did not supply the Department with useable information. Petitioners point out that respondents have furnished no additional facts. Therefore, petitioners urge the Department to continue to apply adverse facts available in the final results.

### ***Department's Position***

We agree with petitioners. For our final results, we continue to base RPPC's net countervailable subsidy rate on adverse facts available.

### **Comment 2: Export Certificate Voucher Program**

Petitioners state that the export certificate voucher program provides two distinct benefits, a preferential exchange rate and an early deposit reward, neither of which can be accurately calculated without RPPC's complete export sales information. Petitioners point out that RPPC repeatedly failed to respond to the Department's requests for information pertaining to all companies that are cross-owned or affiliated with RPPC. Therefore, the universe of sales and subsidies remains unknown, argue petitioners. Petitioners maintain that the Department must apply adverse facts available in a manner that ensures that likely benefits to the entire unknown universe of sales are not understated in the final results and RPPC and other respondents will be deterred from withholding information in future reviews. However, petitioners assert, the Department effectively applied neutral facts available in the Preliminary Results, capturing only the benefit of those sales that RPPC reported. Petitioners argue that the methodology employed by the Department does not attempt to quantify the benefit on unreported sales, including sales by unreported affiliates or cross-owned persons for both components of the export certificate voucher program.

Therefore, petitioners argue that because the Department has found that RPPC did not act to the best of its ability in responding to the questionnaires, it is inappropriate for the Department to rely on neutral facts available in calculating a benefit for this program. Instead, petitioners argue that the Department should apply adverse facts available, the highest rate previously found for each component of the program.

Moreover, petitioners find fault with the Department's determination that the export certificate voucher program in its entirety was terminated as of March 21, 2002 (68 FR 16475). Petitioners argue that this finding is unsupported by record evidence and should be reconsidered for the final results. Petitioners aver that in the recent new shipper reviews as well as the instant case, the Department incorrectly equated the unification of Iran's exchange rates with complete elimination of the export certificate voucher program. Petitioners contend that the ability to obtain a benefit by trading on the margins of two different exchange rates is only one component of the program, another being the



early deposit reward component. Petitioners maintain that the record contains no evidence that this component of the program, which does not hinge on the existence of multiple exchange rates, has been eliminated or repealed.

### ***Department's Position***

Regarding petitioners' assertion that the Department apply adverse facts available in order to determine the benefit from both components of the export certificate voucher program, we agree. As explained in detail in the "Use of Facts Available" section above, the Department finds that RPPC repeatedly failed to answer specific questions and provided incomplete answers.

For the purposes of these final results, we have recalculated the subsidy rates for the export certificate voucher programs and the early deposit reward. For further details, see the "Analysis of Program" section above and the Final Calculation Memo. On this basis, we determine, for liquidation purposes, a net countervailable subsidy of 3.42 percent ad valorem for RPPC for the export certificate voucher portion of the program and, for liquidation purposes, a net countervailable subsidy of 7.58 percent ad valorem for RPPC for the early deposit rewards portion of the program.

We disagree, however, with petitioners' assertion that the Department must apply as adverse facts available the highest rate previously found for each component of the program. The calculation methodology explained above used to calculate a subsidy rate for RPPC's use of the export certificate voucher program and the early deposit rewards is adverse. Specifically, the application of the highest monthly benefit for the export certificate voucher program to the last six months of the POR is an adverse assumption. Moreover, the use of RPPC's total sales as the denominator is adverse in that it is smaller than the export sales denominator used in the Preliminary Results. Finally, the assumption that RPPC received the maximum benefit of six percent on the early deposit reward component of the program is an adverse inference.

We disagree with petitioners that we should apply the highest rates found for these programs in previous segments. As explained above in the "Use of Facts Available" section, if the Department relies on secondary information (e.g., data from a petition) as facts available, section 776(c) of the Act provides that the Department shall, "to the extent practicable," corroborate such information using independent sources reasonably at its disposal. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render benefit data not relevant. In the instant review, the data applied in the Department's calculations in the original investigation are no longer relevant.

As explained on page 1 of the GOI Verification Report, the GOI began to reform the exchange rate regime approximately ten years ago. During those ten years leading up to the March 2002 unification of the exchange rates in Iran, the spreads between exchange rates were gradually decreasing. During the POR of the instant review, the largest difference between the free market rate and the export rate was 122 rials. However, at the time the original investigation was conducted, the exchange rate differentials in Iran were significant. We found in In-Shell Pistachios that the free market price rate was often five to six times higher than the government rate (see 51 FR at 8345). Due to the significant changes to the exchange rate regime in Iran since the time of the investigation, we find that the subsidy rates found in the investigation for the exchange rate programs no longer have probative value.

Moreover, we disagree with petitioners' claim that the Department incorrectly determined that the export certificate voucher program was terminated as of March 21, 2002. Contrary to petitioners' assertion, we are not basing our determination solely on the unification of the Iranian exchange rate system. Instead, information obtained from the GOI at verification of the new shipper reviews confirms that the unification of the exchange rates effectively terminated the entire program (see GOI Verification Report at page 3). Additionally, we note that the early deposit reward program is linked to the difference between the free market rate and the export rate. As we determined in the Pistachios New Shipper Reviews, mathematically, the early deposit reward is calculated as follows:

$$R = Rev * P * (MktRt - ExpRt)$$

*where:*

**R** = Early Deposit Reward

**Rev** = Revenue Earned on Export Sale

**P** = Percentage of Export Sale

**MktRt** = Free Market Rate

**ExpRt** = Export Rate

See GOI Verification Report at page 3. As this formula clearly demonstrates, without the exchange rate difference, there can be no early deposit reward. Therefore, we disagree with petitioners that the early deposit reward component of the program does not hinge on the existence of multiple exchange rates. We also disagree with petitioners that the Department incorrectly equated the unification of Iran's exchange rates with the complete elimination of the export certificate voucher program.

Moreover, we determined in the Pistachios New Shipper Reviews that this program was terminated (see Pistachios New Shipper Reviews and the accompanying Issues and Decision Memorandum at Comment 13). It is not the Department's practice to re-examine the existence of a program that has already been ruled to be terminated. Therefore, we continue to find that the export certificate voucher program in its entirety was terminated as of March 21, 2002.

### **Comment 3: Price Supports Program**

Petitioners urge the Department to reconsider its decision that the price supports program is not countervailable. Petitioners point out that the Department's preliminary determination that this program is not countervailable is based on the Pistachios New Shipper Reviews as well as the fact that no new information was submitted in instant review to warrant reconsideration of this finding. Petitioners disagree with the Department's determination, arguing that in their questionnaire responses, both the

GOI and RPPC stated that some pistachio cooperatives offer minimum purchase prices to their members. Petitioners assert that without the information necessary to evaluate these statements, it must be assumed that the GOI plays a role in providing the subsidy. Specifically, petitioners state that the GOI and RPPC failed to explain how the minimum price is determined, how often and when it is announced, as well as whether the minimum price is tied to market prices and what happens when the market price falls below the guaranteed minimum. In addition, petitioners claim that the GOI and RPPC failed to comply with the Department's minimum requirement to provide a brief description of the program and a description of the records kept on that program.

Petitioners maintain that although the GOI and RPPC claimed that pistachios are not among the list of products for which the government supports the price and/or purchases production, in their answer to this question, RPPC referred the Department to Exhibit 9 of its response, which contained the Agricultural Products Insurance Fund of Crop and Livestock Insurance in Iran. Petitioners allege that since the insurance began in 1984, coverage has been extended to a larger number of crops and "strategic" crops now covered include pistachios. Petitioners maintain that as the fund applies to a limited number of products, it is not generally available to the agricultural sector and may be countervailable.

Petitioners argue that the GOI and RPPC's failure to respond to the Department's questions with respect to this program prevented the Department from conducting a meaningful analysis of the program. Therefore, petitioners urge the Department to resort to the facts otherwise available. When applying the facts available, petitioners urge the Department not to rely on the GOI Verification Report, specifically Exhibit 7 to that report, from the new shipper reviews. Petitioners maintain that it is not conclusive that during the new shipper reviews verification the Department examined the same programs referenced by the GOI and RPPC in this proceeding. Therefore, petitioners urge the Department to disregard Exhibit 7 of the GOI Verification Report and instead apply the rate of 7.11 percent ad valorem from In-Shell Pistachios when countervailing the price supports program.

### ***Department's Position***

We disagree with petitioners' claim that the price supports program is countervailable. In the Pistachios New Shipper Reviews we found that this program was not countervailable based on legislation collected at verification that demonstrated that the pistachio industry was not included among the commodities to which price supports applied (see the GOI Verification Report at page 4 and Exhibit 7 and Pistachios New Shipper Reviews and the accompanying Issues and Decision Memorandum at Comment 5). Absent evidence that this legislation has been amended or repealed, we continue to find this program not countervailable.

Moreover, with respect to petitioners' statement that both the GOI and RPPC stated that some pistachio cooperatives offer minimum purchase prices to their members, we note that there is no evidence on the record to confirm that the GOI played any role in cooperatives setting minimum prices. Therefore, we continue to find that the price supports program is not countervailable.

**RECOMMENDATION:**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the determination in the Federal Register.

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Agree

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Disagree

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Joseph A. Spetrini  
Acting Assistant Secretary  
for Grant Aldonas, Under Secretary

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Date